

REMARKS

Claims 1-16 were originally filed in this application. The action mailed January 27, 2005 required restriction to Group I (claims 1-11) or Group II (claims 12-16). Further, the action required election between four (4) patentably distinct species of the invention.

Applicant elects to prosecute the invention of Group I, claims 1-11, with traverse.

Applicant hereby provisionally elects Species I for examination on the merits. Claims 1, 4, 6, 7, 8, 9, 10 and 11 are generic.

However, Applicant notes that the restriction requirement is improper on its face because it does not meet the requirement that search and examination of the entire application must be a serious burden on the examiner. M.P.E.P. § 803 states:

"If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

According to the MPEP, a restriction requirement must meet 2 criteria: 1) The invention must be independent or distinct; and 2) there must be a serious burden on the examiner if restriction is required. The action wholly lacks any evidence or even an allegation that search and examination of the entire application would be a *serious burden* on the examiner.

Accordingly, the restriction is not proper.

Moreover, according to the MPEP, the burden is the examiner to provide "reasonable examples" that recite material differences. Is it reasonable to construe a dump truck as having a loader arm?

With regard to the election of species requirement, Applicant respectfully refers the examiner to M.P.E.P. § 806.04(b), which states "Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related," then the requirements of M.P.E.P.

§§ 806.05 through 806.05(i) apply. Moreover, “if restriction is improper under either practice, it should not be required.”

The term “signal” is generic to both “light signal” and “non-light signal.” The action treats the claims as if “signal” and “non-light signal” are mutually exclusive. This is not the case. Also, such a view would require one to ignore the “as claimed” aspect of MPEP Section 806(C).

Moreover, the action ignores the fact that claim 1, for example, claims directing the signal from the machine up, or from the load handling position down. How can this claim possibly be distinct “as claimed.” Further, the signal can be directed down from at or adjacent to the load handling position and still be attached to the vehicle.

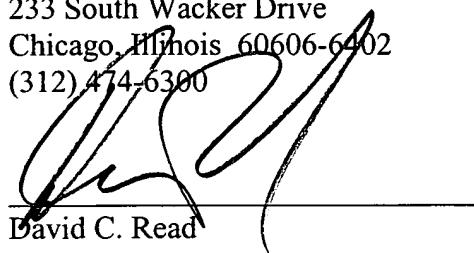
The requirements should be withdrawn.

Respectfully submitted,

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